

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SECOND LEGISLATURE

SECOND SPECIAL SESSION
July 29, 2005

SECOND REGULAR SESSION
January 4, 2006 to May 24, 2006

THE GENERAL EFFECTIVE DATE FOR
SECOND SPECIAL SESSION
NON-EMERGENCY LAWS IS
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AUGUST 23, 2006

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Penmor Lithographers
Lewiston, Maine
2006

Sec. 5. Application. This Act applies to tax years beginning on or after January 1, 2006.

See title page for effective date.

CHAPTER 609

S.P. 759 - L.D. 1972

An Act To Preserve Maine's Working Waterfront

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 36 MRSA §271, sub-§2, ¶A, as amended by PL 1993, c. 664, §12, is further amended to read:

A. Hear and determine appeals according to the following provisions of law:

- (1) The tree growth tax law, chapter 105, subchapter ~~H-A~~ 2-A;
- (2) The farm and open space law, chapter 105, subchapter ~~X~~ 10;
- (3) As provided in section 843;
- (4) As provided in section 844;
- (5) Section 272; ~~and~~
- (6) Section 2865; ~~and~~
- (7) The current use valuation of certain working waterfront land law, chapter 105, subchapter 11;

Sec. 2. 36 MRSA c. 105, sub-c. 11 is enacted to read:

SUBCHAPTER 11

CURRENT USE VALUATION OF CERTAIN WORKING WATERFRONT LAND

§1141. Purpose

It is declared that it is in the public interest to encourage the preservation of working waterfront land and to prevent the conversion of working waterfront land to other uses as the result of economic pressures caused by the assessment of that land, for purposes of property taxation, at values incompatible with its use as working waterfront land and that the necessity in the public interest of the enactment of this subchapter in accordance with the Constitution of Maine, Article IX, Section 8 is a matter of legislative determination.

§1142. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Commercial aquaculture production. "Commercial aquaculture production" has the same meaning as in section 2013, subsection 1, paragraph A-1.

2. Commercial fishing. "Commercial fishing" means harvesting or processing, or both, of wild marine organisms with the intent of disposing of them for profit or trade in commercial channels.

3. Commercial fishing activities. "Commercial fishing activities" means commercial aquaculture production and commercial fishing. "Commercial fishing activities" does not include retail sale to the general public of marine organisms or their byproducts, or other products or byproducts of commercial aquaculture production or commercial fishing.

4. Excess valuation factor. "Excess valuation factor" means a market-based influence on the determination of the just value of working waterfront land that would result in a valuation that is in excess of that land's current use value. "Excess valuation factor" includes, but is not limited to, aesthetic factors, recreational water-use factors, residential housing factors and nonresidential development factors unrelated to working waterfront uses.

5. Head of tide. "Head of tide" means the inland or upstream limit of water affected by the tide.

6. Intertidal zone. "Intertidal zone" means all land affected by the tides between the mean high-water mark and the mean low-water mark.

7. Marine organism. "Marine organism" means an animal or plant that inhabits intertidal zones or waters below head of tide.

8. Support the conduct of commercial fishing activities. "Support the conduct of commercial fishing activities" means:

A. To provide access to the water or the intertidal zone over waterfront property to persons directly engaged in commercial fishing activities; or

B. To conduct commercial business activities that provide goods or services that directly support commercial fishing activities.

9. Used predominantly. "Used predominantly" means used more than 90% for commercial fishing activity, allowing for limited uses for noncommercial

or nonfishing activities if those activities are minor and purely incidental to a property's predominant use.

10. Used primarily. "Used primarily" means used more than 50% for commercial fishing activity.

11. Working waterfront land. "Working waterfront land" means a parcel of land, or a portion thereof, abutting water to the head of tide or land located in the intertidal zone that is used primarily or used predominantly to provide access to or support the conduct of commercial fishing activities. For purposes of this subchapter, a parcel is deemed to include a unit of real estate notwithstanding the fact that it is divided by a road, way, railroad or pipeline.

§1143. Owner's application

An owner or owners of land may elect to apply for taxation under this subchapter for the tax year beginning April 1, 2007 and for subsequent tax years by filing with the assessor the schedule provided for in section 1147, subsection 1.

§1144. Administration; rules

The State Tax Assessor may adopt rules necessary to carry out this subchapter. Rules adopted under this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

§1145. Current use valuation of working waterfront land

The municipal assessor, chief assessor or State Tax Assessor for the unorganized territory shall establish the current use value per parcel for property classified as working waterfront land. The current use value of working waterfront land is the sale price that the parcel would command in the marketplace if it were required to remain in the use currently being made of the parcel as working waterfront land. The assessor may use one of the following methods to determine current use value.

1. Comparative valuation. The assessor may determine the current use value of working waterfront land by considering:

A. All excess valuation factors that affect the land's just value;

B. The comparative valuation of inland commercial enterprises that are being assessed on the basis of a use that is similar to the use of the working waterfront land with respect to function, access and level of activity; and

C. Any other factor that results in a determination of the current use value of the working waterfront land.

2. Alternative valuation. If there is insufficient data to determine the current use value of working waterfront land under subsection 1, the assessor may reduce the ordinary assessed valuation of the land, without regard to permanent protection restrictions and as reduced by the certified ratio, by applying the percentage reductions for which the land is eligible according to the following categories.

A. Working waterfront land used predominantly as working waterfront land is eligible for a reduction of 20%.

B. Working waterfront land used primarily as working waterfront land is eligible for a reduction of 10%.

C. Working waterfront land that is permanently protected from a change in use through deeded restrictions is eligible for the reduction described in paragraph A or B and an additional reduction of 30%.

§1146. Assessment of tax

An assessment of working waterfront land for purposes of property taxation must be based on the value determined in accordance with this subchapter.

§1147. Schedule; qualification

1. Schedule. The owner or owners of waterfront land may apply for taxation under this subchapter by submitting a signed schedule in duplicate, on or before April 1st of the year in which the owner or owners wish to first subject such land to taxation under this subchapter, to the assessor upon a form to be prescribed by the State Tax Assessor that must contain a description of the parcel, together with a map identifying the location and boundaries of the working waterfront land, a description of the manner in which the land is used primarily for commercial fishing activities and other information the assessor may require to aid in the determination of what portion of the land qualifies for classification as working waterfront land. The schedule must be signed and consented to by each person with an ownership interest in the land. Classification of the land as working waterfront land may not be inconsistent with the use prescribed in the comprehensive plan, growth management program or zoning ordinance of the municipality.

In defining the working waterfront land area contained within a parcel, land used primarily for commercial fishing activities must be included, together with any remaining portion of the parcel that is not used for purposes inconsistent with commercial fishing activities as long as the remaining portion is not sufficient in dimension to meet the requirements for a minimum lot as provided by either the state minimum

lot requirements as prescribed by Title 12, section 4807-A or Title 38, chapter 3, subchapter 1, article 2-B, as applicable, or the minimum lot size provided by the zoning ordinance or zoning map pertaining to the area in which the remaining portion is located.

2. Classification. The assessor shall determine what land meets the requirements of this subchapter and shall classify such land as working waterfront land in accordance with this subchapter. The assessor shall file, in the municipal office of the town in which the working waterfront land is located, the original schedule and the value of the working waterfront land as established under this subchapter and the value at which the working waterfront land would have been assessed had it not been classified under this subchapter.

3. Notification of determination. The assessor shall notify the owner or owners in writing of the assessor's determination as to the applicability of this subchapter by June 1st following receipt of a signed schedule meeting the requirements of this section. The assessor's notification must state whether the application has been accepted or denied, and if denied the assessor shall state the reasons for the denial and provide the owner or owners an opportunity to amend the schedule to conform to the requirements of this subchapter.

4. Investigation. The assessor or the assessor's duly authorized representative may enter and examine the lands under this subchapter for tax purposes and may examine any information submitted by the owner or owners.

Upon notice in writing by certified mail, return receipt requested, any owner or owners shall, within 60 days of the receipt of such notice, respond to such written questions or interrogatories as the assessor may consider necessary to obtain material information about those lands. If the assessor determines that it is not reasonable to obtain the required material information regarding those lands through such written questions or interrogatories, the assessor may require any owner or owners, upon notice in writing by certified mail, return receipt requested, or by such other method as provides actual notice, to appear before the assessor at such reasonable time and place as the assessor may designate and answer such questions or interrogatories as the assessor may consider necessary to obtain material information about those lands.

5. Owner obligation. If the owner or owners of any land subject to taxation under this subchapter fail to submit the schedules under this section, or fail to respond, within 60 days of receipt, to written questions or interrogatories of the assessor, or fail within 60 days of receipt of notice as provided in this section to

appear before the assessor to respond to questions or interrogatories, or fail to provide information after notice duly received as provided under this section, that owner or those owners are deemed to have waived all rights of appeal.

It is the obligation of the owner or owners to report to the assessor any disqualifying change of use of land subject to taxation under this subchapter by the end of the tax year in which the change occurs. If the owner or owners fail to report any disqualifying change of use of land to the assessor, the assessor shall assess those taxes that should have been paid, shall assess the penalty provided in section 1148 and shall assess an additional penalty of 25% of the foregoing penalty amount. The assessor may waive the additional penalty for cause.

6. Recertification. The assessor shall determine annually whether any classified land continues to meet the requirements of this subchapter. Each year the assessor shall recertify any classifications made under this subchapter and update the information required under subsection 1. If any classified land no longer meets the requirements of this subchapter, or the owner or owners request withdrawal of the land from the classification in writing, the assessor shall remove the classification.

§1148. Recapture penalty

1. Assessor determination; owner request. If the assessor determines that land subject to this subchapter no longer meets the requirements of this subchapter, the assessor must withdraw the land from taxation under this subchapter. The owner or owners of land subject to this subchapter may at any time request withdrawal of any land from taxation under this subchapter by certifying in writing to the assessor that the land is no longer to be classified under this subchapter.

2. Withdrawal of portion. In the case of withdrawal of a portion of the working waterfront land, the owner or owners, as a condition of withdrawal, shall file with the assessor a schedule including the information required under section 1147, subsection 1 showing the area withdrawn and the area remaining under this subchapter.

3. Penalty. If land is withdrawn from taxation under this subchapter, the assessor shall impose a penalty upon the owner or owners. The penalty is the greater of:

A. An amount equal to the taxes that would have been assessed on the first day of April for the 5 tax years, or any lesser number of tax years starting with the year in which the property was first classified, preceding such withdrawal had such real estate been assessed in each of those

years at its just value on the date of withdrawal less all taxes paid on that real estate over the preceding 5 years, and interest at the prevailing municipal rate from the date or dates on which those amounts would have been payable; and

B. An amount computed by multiplying the amount, if any, by which the fair market value of the real estate on the date of withdrawal exceeds the 100% valuation of the real estate pursuant to this subchapter on the preceding April 1st by the following rates:

(1) If the real estate was subject to valuation under this subchapter for 10 years or less prior to the date of withdrawal, the rate is 30%; and

(2) If the real estate was subject to valuation under this subchapter for more than 10 years prior to the date of withdrawal, the rate is that percentage obtained by subtracting 1% from 30% for each full year beyond 10 years that the real estate was subject to valuation under this subchapter prior to the date of withdrawal until a rate of 20% is reached.

For purposes of this section, just value at the time of withdrawal is the assessed just value of comparable property in the municipality adjusted by the municipality's certified assessment ratio.

4. Assessment and collection of penalties. The penalties for withdrawal must be paid upon withdrawal to the tax collector as additional property taxes. Penalties may be assessed and collected as supplemental assessments in accordance with section 713-B.

5. Eminent domain. A penalty may not be assessed under this section if the withdrawal of the parcel is occasioned by a transfer to the State or other entity holding the power of eminent domain resulting from the exercise or threatened exercise of that power.

6. Relief from requirements. Upon withdrawal, the land is relieved of the requirements of this subchapter immediately and is returned to taxation under the statutes relating to the taxation of real property to be so taxed on the following April 1st.

7. Reclassification as open space. No penalty may be assessed upon the withdrawal of land from taxation under this subchapter if the owner or owners apply for and are accepted for classification of that land as open space land under subchapter 10.

8. Report of penalty. Any municipality that receives a penalty for the withdrawal of land from taxation under this subchapter shall report to the State Tax Assessor the total amount received in that

reporting year on the municipal valuation return form described in section 383.

§1149. Enforcement

A tax lien is created to secure the payment of the penalties provided in section 1148. The lien may be enforced in the same manner and has the same effect as liens on real estate created by section 552.

§1150. Transfer of ownership

If land taxed under this subchapter is transferred to a new owner or owners, in order to maintain the classification, within one year of the date of transfer, the new owner or owners must file with the assessor a new application and a sworn statement indicating that the transferred parcel continues to meet the requirements of section 1142, subsection 11.

§1151. Appeals and abatements

The denial of an application or an assessment made under this subchapter is subject to the abatement procedures provided by section 841. Appeal from a decision rendered under section 841 is to the State Board of Property Tax Review.

§1152. Analysis and report

1. Analysis. The State Tax Assessor, in consultation with municipal assessors, the director of the Land for Maine's Future Program within the Executive Department, State Planning Office, representatives of working waterfront organizations and other interested parties, shall collect and analyze the sales prices of all actual sales that occur in the State of waterfront land that is subject to restrictions on that land's use that are legally enforceable and prohibit or substantially restrict development that is not commercial fishing activity or commercial activity that is the functional equivalent of commercial fishing activity.

2. Report. By January 15th of each even-numbered year, the State Tax Assessor shall submit a report to the joint standing committee of the Legislature having jurisdiction over taxation matters that identifies the total value of each sale of working waterfront land and the value of each sale that is reasonably related to the working waterfront land, that compares the sale price of the working waterfront land with the just value of the same land and that categorizes the sales data by region, type of commercial use or commercial fishing use and any other relevant categories. The report may include any other data or analysis that the assessor finds relevant and any recommendations the assessor develops to assist municipal assessors in calculating the current use value of enrolled working waterfront land that is used for or supports commercial fishing activities. The report may also include recommendations to amend

this subchapter for the purposes of improving or ensuring the accuracy of current use assessment of working waterfront land.

See title page for effective date.

CHAPTER 610

H.P. 1392 - L.D. 1987

An Act To Increase Consumer Awareness of Prescription Drug Pricing

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 32 MRSA §13797 is enacted to read:

§13797. Prescription drug price information

A pharmacist or person acting at the direction of a pharmacist who is asked for consumer price information regarding prescription drugs shall provide to the consumer, on the telephone or in person, depending on the circumstances, the current usual and customary price for cash customers and, if reasonably obtainable by the pharmacist or person acting at the direction of the pharmacist, the price applicable to the consumer. A pharmacy shall post a notice to consumers informing them that they may obtain current usual and customary price information from the pharmacist.

Sec. 2. Basic prescription drug information. By January 1, 2007, the Governor's Office of Health Policy and Finance and the Department of Health and Human Services, Office of Elder Services shall convene a working group to discuss consumer access to prescription drug information and shall post on a publicly accessible website basic prescription drug information, including, but not limited to, locations and phone numbers of pharmacies in the State and information for consumers on obtaining current usual and customary price information.

See title page for effective date.

CHAPTER 611

H.P. 1494 - L.D. 2103

An Act To Implement the Recommendations of the Joint Standing Committee on Education and Cultural Affairs Regarding Review of the State Board of Education under the State Government Evaluation Act

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 20-A MRSA §405, sub-§3, ¶U, as enacted by PL 1995, c. 395, Pt. J, §4 and amended by PL 2003, c. 545, §5, is further amended to read:

U. Review the organization of school administrative units statewide to identify current cooperative agreements between school administrative units. Cooperative agreements may include, but are not limited to: purchasing or contract agreements; administrative functions; shared staff and staff training; and technology initiatives. Based on the review, and in consultation with the department, the state board may ~~require~~ recommend that school administrative units develop and carry out a plan for a cooperative agreement with one or more other school administrative units. "Cooperative agreement" may include agreements between school administrative units and career and technical education regions and career and technical education centers; and

Sec. 2. 20-A MRSA §405, sub-§3, ¶V, as enacted by PL 1995, c. 395, Pt. J, §4, is amended to read:

V. Study school ~~consolidation~~ administrative unit configuration statewide, ~~develop a school consolidation plan that includes criteria for evaluating opportunities for consolidation and, if desirable, develop a time line for implementation.~~

See title page for effective date.

CHAPTER 612

S.P. 712 - L.D. 1795

An Act To Ensure the Long-term Capacity of Municipal Landfills

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §1303-C, sub-§1-B is enacted to read:

1-B. Bypass. "Bypass" means any solid waste that is destined for disposal, processing or beneficial use at a solid waste facility but that cannot be disposed of, processed or beneficially used at that facility because of the facility's malfunction, insufficient capacity, inability to process or burn, downtime or any other comparable reason. This subsection is repealed January 1, 2007.